

SAMUEL F. WILLIAMS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
NORTHROP GRUMMAN SHIP SYSTEMS,)	DATE ISSUED: 03/27/2006
INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees and Decision on Motion for Reconsideration of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

John D. Gibbons (Gardner, Middlebrooks, Gibbons, Kittrell, Olsen, Walker & Hill, P.C.), Mobile, Alabama, for claimant.

Donald P. Moore (Franke, Rainey & Salloum, PLLC), Gulfport, Mississippi, for self-insured employer.

Before: DOLDER, Chief Administrative Appeals Judge, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Supplemental Decision and Order Awarding Attorney Fees and Decision on Motion for Reconsideration (2004-LHC-0797) of C. Richard Avery rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *See Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant allegedly sustained a spider bite at work on August 29, 2003. Claimant filed a claim for benefits, which employer controverted. The parties ultimately agreed to settle the claim for disability benefits, pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i), for a lump sum of \$400. In addition, employer agreed to pay authorized medical

expenses related to the alleged injury. The administrative law judge approved the settlement in November 2004.

Subsequently, claimant's counsel submitted a petition to the administrative law judge requesting an attorney's fee of \$2,550, representing 13.5 hours of attorney time at \$200 per hour. Employer filed objections, alleging that: (1) the hourly rate of \$200 is unreasonable in this instance; (2) the fee sought is exorbitant in light of claimant's recovery; (3) specific hours for telephonic and office conferences are excessive; and (4) time sought for simple tasks is excessive because of counsel's use of a one-quarter hour minimum billing rate. To these objections, claimant's counsel replied that it was employer's continued denial of the claim that caused the attorney's time and expenses to be incurred.

The administrative law judge discussed the principles of *Hensley v. Eckerhart*, 461 U.S. 424 (1983), that an attorney's fee award must be viewed in light of the results obtained. In this regard, the administrative law judge stated that claimant prevailed on his claim, and then considered whether the level of success achieved made the requested fee reasonable. The administrative law judge found that, by the terms of the settlement agreement, it was conceded that claimant waited some two weeks to report the spider bite as a work-related event, and Dr. Lightfoot described the abscess he treated as a "possible spider bite." Therefore, the administrative law judge found that because an issue existed from the outset as to the compensability of the claim, employer logically questioned its liability therefor, which necessitated claimant's counsel's services. While acknowledging that claimant was entitled to representation in pursuing this contested claim, the administrative law judge found that because "this was never a case with a great potential," and given claimant's recovery of \$400, the administrative law judge concluded that a \$1,000 attorney's fee is fair and reasonable in this case. The administrative law judge denied claimant's motion for reconsideration of the fee award.

Claimant appeals the fee award, contending that the administrative law judge misapplied *Hensley* as allowing the award of a lump sum fee without a stated basis for reductions from the requested amount. Employer responds, urging affirmance of the administrative law judge's fee award of \$1,000. Claimant filed a reply brief in support of his appeal.

We have carefully considered claimant's contentions of error and conclude that the administrative law judge's fee award must be affirmed. The factfinder is in the best position of observing the factors affecting the amount of an attorney's fee award. *See Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3^d Cir. 2001). In addition, the regulation at 20 C.F.R. §702.132(a) states that the amount of benefits is a factor relevant to the amount of a fee award. Moreover, the administrative law judge's recitation of the *Hensley* principals is legally sound, and the Board is not free to substitute

its judgment for that of the administrative law judge concerning the amount of an appropriate fee in light of claimant's degree of success. *Barbera*, 245 F.3d at 289, 35 BRBS at 27(CRT); *see also Berezin v. Cascade General, Inc.*, 34 BRBS 163 (2000); *Ezell v. Direct Labor, Inc.*, 33 BRBS 19 (1999); *Hill v. Avondale Industries, Inc.*, 32 BRBS 186 (1998), *aff'd sub nom. Hill v. Director, OWCP*, 195 F.3d 790, 33 BRBS 184(CRT) (5th Cir. 1999), *cert. denied*, 530 U.S. 1213 (2000). As claimant has not established that the administrative law judge's reduction of his fee request to \$1,000 is contrary to law or an abuse of discretion, we reject claimant's contention of error in this regard.

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees and Decision on Motion for Reconsideration are affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge